

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

3M COMPANY

and

3M INNOVATIVE PROPERTIES  
COMPANY,

Plaintiffs,

v.

VITA ZAHNFABRIK H. RAUTER  
GMBH & CO. KG,

and

VIDENT, INC.,

Defendants.

**Civil No. 05CV1875JMR/JJG**

**AMENDED COMPLAINT**

**JURY TRIAL DEMANDED**

Plaintiffs 3M Innovative Properties Company and 3M Company (collectively, “3M”) bring this Complaint to stop and remedy Defendants’ willful infringement, in this district and elsewhere, of 3M’s United States patent rights relating to the coloring of dental ceramic materials. 3M alleges as follows:

**NATURE OF THE ACTION**

1. This is an action for patent infringement arising under the patent laws of the United States, 35 U.S.C. §§ 271, 281-285.

### **THE PARTIES**

2. Plaintiff 3M Innovative Properties Company (“3M IPC”) is a corporation organized and existing under the laws of the state of Delaware, with its principal place of business at 3M Center, St. Paul, Minnesota.

3. Plaintiff 3M Company (“3M Co”) is a corporation organized and existing under the laws of the state of Delaware, with its principal place of business at 3M Center, St. Paul, Minnesota.

4. Defendant Vita Zahnfabrik H. Rauter GmbH & Co. Kg (“Vita”) is a corporation organized and existing under the laws of Germany, with its principal place of business located at Spitalgasse 3, Bad Sackingen, Germany.

5. Defendant Vident, Inc. (“Vident”) is a corporation organized and existing under the laws of the state of California, with its principal place of business located at 3150 East Birch Street, Brea, California.

### **JURISDICTION AND VENUE**

6. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

7. This Court has personal jurisdiction over the Defendants because, *inter alia*: (1) the Defendants, on information and belief, do business throughout the United States, including in this judicial district; and (2) under the Minnesota Long Arm Statute, Minn. Stat. § 543.19, the Defendants, on information and belief, transact business in Minnesota and/or have committed acts of patent infringement within and/or outside Minnesota that have caused injury in Minnesota. On information and belief, Vident is an

affiliate of Vita. Vident offers for sale and sells dental products made by Vita, including ceramic materials used for making dental crowns and bridges, to customers throughout the United States, including customers in this District. Vita maintains a website at [www.vita-zahnfabrik.com](http://www.vita-zahnfabrik.com). The Vita website provides worldwide contact information to obtain information about Vita's products. For the United States, the Vita website identifies Vident, Inc. in Brea, California, as a source of information about Vita's products. Upon information and belief, as further set forth below, Vita makes the products at issue in this litigation along with the instructions for use. Vita then imports those products into the United States and sells them through Vident to customers in the United States, including customers in this District.

8. Venue is proper in this Judicial District pursuant to 28 U.S.C. §§ 1391(b) and (c) and 1400(b).

#### **THE PATENT-IN-SUIT**

9. On March 23, 2004, United States Patent No. 6,709,694 ("the '694 patent"), entitled "Coloring Ceramics by way of Ionic or Complex-Containing Solutions," was duly and legally issued by the United States Patent and Trademark Office. 3M IPC owns the '694 patent by assignment from 3M ESPE AG, a German corporation affiliated with 3M Co and 3M IPC. 3M Co is an exclusive licensee of the '694 patent. A true and correct copy of the '694 patent is attached as Exhibit A to this Complaint.

10. 3M Co manufactures and sells, in this District and throughout the United States, a CAD/CAM (computer-aided design/computer-aided manufacturing) system,

known as the LAVA® system, for fabricating high-strength ceramic dental crowns and bridges. This system involves scanning a physical model of a patient's teeth to create a digital model, which is used to digitally design a crown or bridge substructure with software on a computer. Once the digital substructure is created, the computer sends instructions to a milling machine, which fabricates a physical crown or bridge substructure from a ceramic mill blank. The milled substructure is colored as desired by the user with a coloring solution, known as the "3M ESPE LAVA® Frame Shade dyeing liquid," using a process described and claimed in the '694 patent. The colored substructure is sintered in a high-temperature furnace and further processed to produce a final crown or bridge.

11. 3M Co's LAVA® system has enjoyed substantial commercial success since its introduction to the market and is used by dental laboratories in this District and throughout the United States. The benefits provided by the coloring process described and claimed in the '694 patent have contributed to the success of the LAVA® system and are used by 3M Co in its marketing activities to distinguish the LAVA® system from competing systems.

#### **DEFENDANTS' INFRINGING ACTIVITIES**

12. On information and belief, among the dental products made by Vita that defendant Vident offers for sale and sells to customers throughout the United States, including customers in this District, is a line of ceramic mill blanks known as "VITA In-Ceram YZ CUBES for CEREC" ("YZ Cubes"). These YZ Cubes are marketed for use in

the CEREC inLab® system, a CAD/CAM system for creating ceramic dental restorations, including crowns and bridges, that competes with 3M's LAVA® system.

13. On information and belief, defendant Vident recently began selling and offering for sale a coloring solution made by Vita. This coloring solution is marketed under the name "COLORING LIQUID for VITA In-Ceram YZ Cubes" ("Vita Coloring Liquid"). Defendants' product literature indicates that the Vita Coloring Liquid is used for the coloration of substructures, including crown and bridge substructures, made from YZ Cubes.

14. Use of the Vita Coloring Liquid to color dental ceramic materials as directed by the Working Instructions packaged with the product and as described in Defendants' promotional literature practices the coloring method claimed in 3M's '694 patent.

**FIRST CLAIM FOR RELIEF**  
**VITA'S INFRINGEMENT OF THE '694 PATENT**

15. 3M realleges and incorporates by reference Paragraphs 1 through 14 of this Complaint.

16. Defendant Vita has been and is directly infringing, actively inducing others to infringe, and/or contributing to the infringement of the '694 patent in this District and elsewhere by using, importing, offering for sale and/or selling the Vita Coloring Solution, in violation of 35 U.S.C. § 271.

17. On information and belief, defendant Vita will continue to infringe, actively induce others to infringe, and/or contribute to the infringement of the '694 patent unless and until it is enjoined by this Court.

18. On information and belief, defendant Vita's continuing infringement of the '694 patent after notice of this action and/or the '694 patent constitutes willful infringement.

19. Defendant Vita has caused and will continue to cause 3M irreparable injury and damage by directly infringing, actively inducing others to infringe, and/or contributing to the infringement of the '694 patent. 3M will suffer further irreparable injury, for which 3M has no adequate remedy at law, unless and until Vita is enjoined from infringing the '694 patent.

**SECOND CLAIM FOR RELIEF**  
**VIDENT'S INFRINGEMENT OF THE '694 PATENT**

20. 3M realleges and incorporates by reference Paragraphs 1 through 14 of this Complaint.

21. Defendant Vident has been and is directly infringing, actively inducing others to infringe, and/or contributing to the infringement of the '694 patent in this District and elsewhere by using, importing, offering for sale and/or selling the Vita Coloring Solution, in violation of 35 U.S.C. § 271.

22. On information and belief, defendant Vident will continue to infringe, actively induce others to infringe, and/or contribute to the infringement of the '694 patent unless and until it is enjoined by this Court.

23. On information and belief, defendant Vident's continuing infringement of the '694 patent after notice of this action and/or the '694 patent constitutes willful infringement.

24. Defendant Vident has caused and will continue to cause 3M irreparable injury and damage by directly infringing, actively inducing others to infringe, and/or contributing to the infringement of the '694 patent. 3M will suffer further irreparable injury, for which 3M has no adequate remedy at law, unless and until Vident is enjoined from infringing the '694 patent.

**PRAYER FOR RELIEF**

WHEREFORE, 3M respectfully requests this Court:

- A. To enter judgment that Vita and Vident have infringed the '694 patent;
- B. To enter orders preliminarily and permanently enjoining Vita and Vident, and their officers, agents, servants, and employees, and all persons in active concert or participation with any of them, from infringing the '694 patent;
- C. To award 3M its damages in an amount sufficient to compensate 3M for Vita's and Vident's infringement of the '694 patent, together with pre-judgment and post-judgment interest and costs, pursuant to 35 U.S.C. § 284;
- D. To treble the damages awarded to 3M by reason of Vita's and Vident's willful infringement of the '694 patent after notice of this action and/or the '694 patent;
- E. To declare this case to be "exceptional" under 35 U.S.C. § 285 and to award 3M its attorneys' fees, expenses, and costs incurred in this action; and

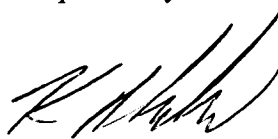
F. To award 3M such other and further relief as this Court deems just and proper.

**DEMAND FOR JURY TRIAL**

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, 3M respectfully requests a trial by jury of any and all issues on which a trial by jury is available under applicable law.

Dated: November 4, 2005

Respectfully submitted,



Kevin H. Rhodes (Reg. No. 0318115)

Sean J. Edman (Reg No. 0298876)

**3M INNOVATIVE PROPERTIES  
COMPANY**

3M Center

P.O. Box 33427

Saint Paul, Minnesota 55144

Telephone: (651) 736-4533

Fax: (651) 737 2948

*Attorneys for Plaintiffs*

*3M Innovative Properties Company and  
3M Company*

**OF COUNSEL:**

John C. Adkisson (#0266358)

Ann N. Cathcart Chaplin (#0284865)

**FISH & RICHARDSON P.C., P.A.**

3300 Dain Rauscher Plaza, P.A.

Minneapolis, Minnesota 55402

Telephone: (612) 335-5070

Fax: (612) 288-9696